IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVFENTH DAY OF JANUARY
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION No. 18819 of 2000

Between:
D.Jagadeeswar
...PETITIONER
AND

The Secretary, Grade-II,
Agricultural Market Committee,
Nizamabad, Nizamabad District.

...RESPONDENT

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed questioning the seizure of lorry of the petitioner bearing registration No. APJ 975 by the respondent-Agricultural Market Committee and for a direction to release the said vehicle.

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent-Market Committee.

The petitioner is the owner of the lorry bearing Registration No.APJ-975 and had obtained permit to run the vehicle, which was valid upto 25.4.2004. The vehicle was hired to a commission agent in the Market Committee and when the said vehicle was loaded with 53 bags of turmeric, the same was seized under cover of a Panchanama by the respondent by the respondent, mainly on the ground that it was not accompanied by gate pass and trip sheet. Immediately after seizure of the vehicle, the petitioner approached the respondent-Market Committee for release of the vehicle and also got issued notices to the respondent on 10.6.1999 and 25.3.2000 for release of

the vehicle. In spite of such notices, when the vehicle was not released, the petitioner filed this writ petition in the year 2000.

This writ petition is filed mainly on the ground that there are no grounds for seizing the vehicle and in any event the respondent-Market Committee cannot detain the vehicle for such a long time without taking any further steps in the matter.

The Selection Grade Secretary of the respondent-Agricultural Market Committee has filed the counter affidavit on behalf of the Market Committee. In the counter affidavit, it is stated that one commission agent by name M/s Amandu Gangaram & B.Hanmanulu was the license holder and was operating business in the area of the market yard from 1974-75, and all of a sudden the said commission agent closed his shop from 15.5.1999 and the said commission agent was liable to pay heavy amounts of sale proceeds to a number of farmers. So far as seizure is concerned, it is stated that when the vehicle of the petitioner was loaded with 53 bags of Turmeric and was moving in the premises without any gate pass, and in suspicious circumstances, the security staff stopped the vehicle, on which, the driver of the vehicle fled away from the scene. While admitting that the seizure was effected by conducted panchanama by the respondent-Secretary, it is stated that due to default in payment of sale proceeds by the commission agent, some farmers themselves forcibly taken away the vehicle from the custody of the respondent-Market Committee, and the vehicle was taken to outside limits of Nizamabad District. It was also stated that the vehicle was not accompanied by a proper trip sheet. In that view of the matter, the vehicle was seized in exercise of powers under Section 17-C(7) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short “the Act”). Further it is stated that though this Court had issued interim directions for release of the vehicle on furnishing security and though the security amount was determined at Rs.4.00 lakhs, as the petitioner failed to give bank guarantee, the vehicle could not be released. But

the counter affidavit is silent with regard to subsequent steps taken by the respondent-Market Committee, consequent to the seizure of the vehicle. But, however, the learned Standing Counsel appearing for the respondent-Market Committee has produced a copy of letter dated 5.12.2005 in Lr.No.HC/26/2000-01, addressed by the Selection Grade Secretary, Agricusltural Market Committee, Nizamabad to the Standing Counsel intimating that the seizure has been reported to the Additional Judicial First Class Magistrate, Nizamabad on 2.12.2005 by explaining the reasons for delay.

Sri Jalli Kanakaiah, learned counsel for the petitioner submitted that the seizure of the vehicle itself is illegal and arbitrary and that the power under Section 17-C (7) of the Act is confined to the seizure of notified agricultural produce, livestock or products of livestock where there is a prima facie case of non-payment of market fees on the commodity, which was being carried by the petitioner. But the seizure was effected only on the ground that the vehicle was not having the gate pass and the trip sheet. It is submitted that even if the said allegations are true and correct, in any event, there was no authority for the respondent-Market Committee to detain or keep the vehicle in their custody without taking any further steps. It is submitted that in view of the illegal seizure and detention for last several years, the petitioner is deprived of the income from the vehicle, which the petitioner was getting by giving on hire.

On the other hand, it is submitted by Shri V.V.N.Narayana Rao, counsel appearing for the respondent-Market Committee that as the vehicle was parked in front of a commission agent, who had defaulted in payment of heavy amounts to the farmers, and as the vehicle was not accompanied by proper documents, seizure was effected. It is further submitted that it was obligatory on the part of the respondent-Market Committee to produce the vehicle before the competent Judicial First Class Magistrate for taking further steps, but, however, as the petitioner obtained conditional interim orders from this court, the

vehicle could not be produced before the competent Magistrate, in anticipation of the petitioner complying with the conditional order. Further, it is submitted that after seizure of the vehicle, the vehicle itself was taken away by some farmers forcibly in protest against the commission agent, who had defaulted in payment of sale proceeds to several farmers and as such police complaint was also lodged against the farmers for taking the vehicle from the custody of the respondent-Market Committee.

The Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 is enacted with an object to regulate the buying and selling of agricultural produce, livestock and products of livestock, which were notified. Section 17-C empowers the assessing authority or any officer of the Department of Marketing not below the rank of Assistant Director of Marketing to order production of accounts and to make inspection and seizure so as to verify whether the particular trader has paid market fees for the transactions undertaken by him. Section 17-C(7) of the Act empowers the assessing authority or the officer authorized by such authority, to seize any notified agricultural produce, livestock or products of livestock, if such officer has reason to believe that any fees or other amount due under the Act, in respect of such produce, has not been paid. The said provision also makes it clear that the seizure made under Section 17-C(7) of the Act shall be reported forthwith to the Magistrate having jurisdiction to try the offences under the Act and the provisions under Sections 457, 458 and 459 of the Code of Criminal Procedure Code are made applicable.

A reading of Section 17-C(7) makes it clear that power for seizure itself is confined in cases where there is prima facie material to show that the commodity which was being undertaken for transportation is not supported by evidence in proof of payment of market fees. The said Section also does not confer any power on the respondent-Market Committee to seize the vehicle. Even a reading of the counter affidavit indicates that there is no allegation that the petitioner undertook

transportation of any commodity which was not supported by payment of market fees. It only states that the seizure was effected only on the ground that the vehicle was stopped in front of the shop of the commission agent, who was licensee and who had abruptly closed the business by defaulting in payment of huge amounts to the farmers. But, so far as the petitioner is concerned, who was the owner of the vehicle, he had no connection with the licensee who was alleged to have defaulted in payment of sale proceeds to the farmers.

In view of the provisions under Section 17-C of the Act which only confer power to seize any notified agricultural produce, livestock or products of livestock taken or proposed to be taken out of the notified market area either by human labour or in any vehicle, vessel or other conveyance, in case any fees or other amount due under this Act in respect of such produce has not been paid, the grounds mentioned in the seizure panchanama are not valid grounds for seizure of the vehicle itself. In any event, when the seizure of the vehicle was effected on fleeing away the driver and the same was in custody of the respondent-Market Committee, it was the duty of the officers of the respondent-Market Committee to protect the seized property and to take further steps as per the provisions of the Act by producing the same before the Magistrate having jurisdiction for taking further steps in the matter and Section 17-C indicates that the provisions of Sections 457, 458, and 459 of the Code of Criminal Procedure are applicable.

Even assuming for a moment that the petitioner had not taken delivery of the vehicle by furnishing the bank guarantee as directed in the interim order by this Court, in all fairness and with due diligence, the respondent-Market Committee ought to have taken steps to produce the vehicle before the competent Magistrate for taking further steps. When it was the case of the petitioner that the vehicle was valued at Rs.4.00 lakhs and he could not afford to give bank guarantee for such a huge sum, the only course open to the respondent-Market Committee was to produce the lorry before the Magistrate having

jurisdiction for taking further steps in the matter, which the respondent-Market Committee failed to do.

Though it is submitted by the learned Standing Counsel for the respondent-Market Committee that as per the communication given to him vide letter No.HC/26/2000-01, dated 5.12.2005, the vehicle was produced before the competent Court on 2.12.2005, the learned counsel for the petitioner has produced a copy of endorsement made by the Judicial Magistrate of First Class, Nizamabad, wherein his application, which was filed under Section 451 Cr.P.C., was returned with an endorsement that the vehicle was not deposited in the Court, and as such, his application is not maintainable.

The very admission of the respondent-Market Committee that subsequently some farmers have taken the custody of the vehicle itself shows the dereliction of duties on the part of the respondent-Market Committee officers, who were responsible for protecting the seized vehicle and taking further steps as required under law. In view of the gross negligence on the part of the respondent-Market Committee for not protecting the seized vehicle and not taking further steps as required under Section 17-C(7) of the Act, the petitioner is deprived of the vehicle for several years and the income therefrom. It is evidently a fit case to award damages to the petitioner. But, in the absence of any further enquiry as to the diminished value of the seized lorry, it is not possible for this court to award any specific damages in exercise of powers under Article 226 of the Constitution of India. But, at the same time, it is evidently a fit case to order exemplary costs while allowing the writ petition.

Accordingly, I hold that the action of the respondent-Market Committee in seizing the vehicle of the petitioner bearing Registration No.APJ-975 on 16.5.1999, is illegal and without jurisdiction, and, consequently, the respondent-Market Committee is directed to release the said vehicle to the petitioner and it is left open for the petitioner to take steps for claiming appropriate damages by approaching the

competent civil court.

The Writ Petition, therefore, is allowed with exemplary costs of Rs.25,000/- (Rupees twenty five thousand only), payable by the respondent-Market Committee to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

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(R.SUBHASH REDDY, J.)

27.1.2006

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